

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENYON D. BROWN,

Petitioner,

v.

NORTH KERN STATE PRISON
WARDEN,

Respondent.

No. 1:20-cv-01043-NONE-EPG-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE AND CLOSE
CASE, AND DECLINING TO ISSUE A
CERTIFICATE OF APPEALABILITY

(Doc. No. 7)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner raises two grounds for federal habeas relief. (Doc. No. 1.) First, he argues that, due to dangerous prison conditions arising from the coronavirus, he should be paroled on the earlier of two parole dates related to concurrent sentences he is now serving. (*Id.* at 3.) Second, petitioner argues that his projected release date is not consistent with his plea agreement and that there was error in the enhancement applied to his sentence. (*Id.* at 4.)

On September 8, 2020, the assigned magistrate judge issued findings and recommendation recommending that the court abstain from exercising jurisdiction and that the petition be dismissed without prejudice. (Doc. No. 7.) The magistrate judge based the recommendation on the fact that petitioner has an appeal pending before the California Court of Appeal concerning one of his underlying convictions at issue in this petition. (*Id.* at 3.) The magistrate judge also

1 found that petitioner has not made a showing of extraordinary circumstances that would render
2 abstention under *Younger v. Harris*, 401 U.S. 37 (1971), inappropriate. (*Id.*) Additionally, when
3 petitioner was served with the findings and recommendations, he was also provided with a copy
4 of the form used for civil rights complaint by prisoners. (*Id.*, Attm. 1.)

5 The findings and recommendation were served on petitioner and contained notice that any
6 objections were to be filed within thirty (30) days of the date of service of the findings and
7 recommendation. Petitioner timely filed objections. (Doc. Nos. 8–11.) The objections cite as
8 reasons for this federal court to intervene both coronavirus and what petitioner contends is an
9 unconstitutional allocation of good conduct credits by state officials based on work assignments.
10 (*Id.*) The court observes that petitioner does not allege any irreparable injury related to either
11 circumstance.

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
13 *de novo* review of the case. Having carefully reviewed the entire file, including petitioner’s
14 objections, the court holds the findings and recommendation to be supported by the record and
15 proper analysis.

16 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
17 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
18 absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only
19 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.
20 § 2253. The court should issue a certificate of appealability if “reasonable jurists could debate
21 whether (or, for that matter, agree that) the petition should have been resolved in a different
22 manner or that the issues presented were ‘adequate to deserve encouragement to proceed
23 further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
24 880, 893 & n.4 (1983)).

25 In the present case, the court finds that reasonable jurists would not find the court’s
26 determination that the petition should be dismissed debatable or wrong, or that petitioner should
27 be allowed to proceed further. Therefore, the court declines to issue a certificate of appealability.

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Accordingly:

1. The findings and recommendation issued on September 8, 2020 (Doc. No. 7) are adopted;
2. The petition for writ of habeas corpus is dismissed without prejudice;
3. The Clerk of Court is directed to assign a district judge to this case for the purpose of closing the case and then to close the case; and
4. The court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: **October 7, 2020**


UNITED STATES DISTRICT JUDGE